IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Bail Appl..No. 4349 of 2007()

CRIME NO.157/07 OF MUHAMMA POLICE STATION

PETITIONERS/ACCUSED 1,3 & 4

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1. UDESH,
   S/O.GOPI, AGED 27 YEARS, EDAVARIKAL, KAYIPURAM,
   MUHAMMA P.O.

2. RENJITH,
   AGED 26 YEARS, S/O.RAMACHANDRA MENON,
   CHELLAT HOUSE, KAYIPURAM, MUHAMMA P.O.

3. SAJEEV,
   AGED 25 YEARS, S/O.SATHYAN,
   KOLLAM VELIYIL, KAYIPURAM, MUHAMMA P.O.

BY ADV. SRI.G.PRIYADARSAN THAMPI

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTING SUB INSPECTOR OF POLICE,
MUHAMMA POLICE STATION, REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/07/2007, ALONG WITH BA NO. 4355 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos.4349 & 4355 OF 2007

Dated this the 25th day of July, 2007

ORDER

Applications for anticipatory bail. The petitioners are accused 1 to 4. Altogether, there are four accused persons. They face allegations, inter alia, under Secs.308 and 324 read with Sec.34 of the IPC. The crux of the allegations is that on account of prior animosity - animosity arising from the fact that the 1st accused's father was arrested in an abkari offence and the accused entertained an impression that the de facto complainant was the informer, the accused persons on 17/6/07 armed with dangerous weapons - like sword-sticks and iron rods, attacked the de facto complainant. The victim allegedly suffered serious injuries, including a 5 x 1 cms. lacerated injury on the occipital region. Investigation is in progress. All the four accused are named in the F.I.R. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submit that the petitioners are absolutely innocent. That there is strain in the relationship between the parties is not disputed. On account of such strain, false allegations are being raised, is the very case of the petitioners. The learned counsel for the 2nd accused submits that the 2nd accused was not available in the scene at all. The de facto complainant allegedly has an illicit connection with the deaf and dumb sister of the 1st accused. That relationship was questioned and hence such a false allegation is now being raised against the petitioners, it is contended.

3. The learned Public Prosecutor opposes the applications. The learned Public Prosecutor submits that there is nothing to indicate that the allegations do not represent the real incident. All the four accused have been named in the F.I.R. The allegations are eminently supported by the materials collected so far. In these circumstances, there is no justification in the prayer for invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

4. Having considered all the relevant circumstances, I am persuaded to agree that there is merit in the opposition by the learned Public Prosecutor. I find absolutely no justification to

invoke the discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a proper case in which the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, these bail applications are dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge